

**Minutes of Meeting
BOARD FOR CONTRACTORS
INFORMAL FACT-FINDING CONFERENCES
October 29, 2003 (1:30 p.m.)**

The Board for Contractors convened in Richmond, Virginia, for the purpose of holding Informal Fact-Finding Conferences pursuant to the Administrative Process Act.

Robert M. Kirby, Board member, presided. No other Board members were present.

Jeffrey Buckley appeared for the Department of Professional and Occupational Regulation.

The conferences were recorded by Inge Snead & Associates, LTD. and the Summaries or Consent Orders are attached unless no decision was made.

Disc=Disciplinary Case
Lic=Licensing Application
RF=Recovery Fund Claim
Trades=Tradesmen Application

C=Complainant/Claimant
A=Applicant
R=Respondent/Regulant
W=Witness
Atty = Attorney

Participants

Bernard Bryant Campbell Sr. and
Michael Layne Tabor
File Number 2003-01513 (RF)

G. Campbell – C
B. Campbell – C
C. Brown – Atty for C

Gerald Spates and
H & H Builders LLC
File Number 2003-01616 (RF)

Spates – C

Elizabeth Jenkins and
John E. Morrison
File Number 2003-01560 (RF)

Violet Tabb for Jenkins - C
Rose – Atty for C
Morrison – R

Curtiz Fultz and
Sunrooms by Steppe LC
File Number 2003-00297 (RF)

Fultz – C

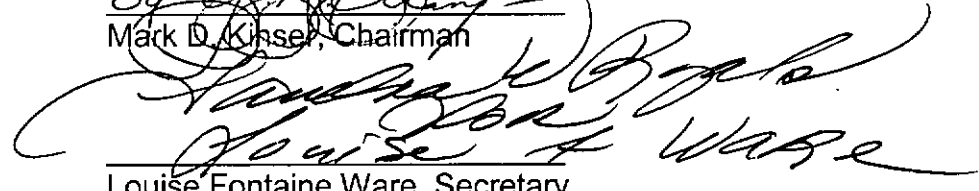
William Stokes and
Sammy Dalton Miller Jr.
File Number 2002-03093 (RF)

Stokes – C

The meeting adjourned at 3:40 p.m.

BOARD FOR CONTRACTORS


Mark D. Kinser, Chairman


Louise Fontaine Ware, Secretary

COPY TESTE:

Custodian of Records

**COMMONWEALTH OF VIRGINIA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION**

BOARD FOR CONTRACTORS

**IN RE: In the matter of the Virginia Contractor Transaction Recovery Act
Claim of Bernard Bryant Campbell, Sr., and Greta Lindale Campbell
(Claimants) and Michael Layne Tabor, t/a G T Construction Co., (Regulant)
LICENSE NUMBER: 2705-046444**

FILE NUMBER: 2003-01513

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on October 29, 2003, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding sent by certified mail to Mr. and Mrs. Bernard Bryant Campbell, Sr. and Mr. Michael Lane Tabor, Sr., t/a G.T. Construction Co. on September 2, 2003. The following individuals participated at the conference: Bernard Bryant Campbell, Sr. and Greta Lindale Campbell, Claimants; W. Colby Brown, Attorney for the Campbell's; Jeffrey Buckley, Staff Member; and Robert M. Kirby, Presiding Board Member. Michael Lane Tabor, Sr., t/a

G.T. Construction Co., Regulant, did not appear in person or by any other qualified representative.

Background

On **April 10, 2001**, in the United States Bankruptcy Court, Western District of Virginia, Michael Layne Tabor, Sr., dba G. T. Construction Co., filed a Chapter 7 Petition.

The **claim** in the amount of **\$10,000.00** was received by the Department of Professional and Occupational Regulation on **October 15, 2002**. The initial claim was actually filed with a letter of complaint of September 5, 2001.

Summation of Facts

1. **Code of Virginia Section 54.1-1120(A)** requires the claimant to obtain a final judgment in a court of competent jurisdiction in the Commonwealth of Virginia against any individual or entity which involves improper or dishonest conduct.

Michael Layne Tabor, Sr., dba G. T. Construction Co., filed for bankruptcy protection, therefore judgment was not obtained.

2. **Code of Virginia Section 54.1-1120(A)** also requires the transaction occurring during a period when such individual or entity was a regulant and in connection with a transaction involving contracting.

The claimants **did** contract with the regulant.

The Board issued Class A License Number 2705046444 to Michael Layne Tabor t/a G T Construction Co., on **September 9, 1998**. The license will expire on **September 30, 2004**. The claimants entered into a written contract with G T Construction Co., on **April 26, 1999** for the construction of a house.

3. **Code of Virginia Section 54.1-1120(A)(1)** provides whenever action is instituted against a regulant by any person, such person shall serve a copy of the process upon the Board.

The Contractors Board was not served prior to the claim being filed.

4. **Code of Virginia Section 54.1-1120(A)(2)** states a copy of any pleading or document filed subsequent to the initial service process in the action against a regulant shall be provided to the Board.

The Board did not receive any pleadings or documents prior to the claim being filed.

5. **Code of Virginia Section 54.1-1120(A)(3)** requires a verified claim to be filed no later than twelve months after the judgment becomes final.

The claim was received on **October 15, 2002**. Judgment was not obtained, as the regulant filed for bankruptcy protection.

6. **Code of Virginia Section 54.1-1120(A)(4)** states the claimant shall be an individual whose contract with the regulant involved contracting for the claimant's residence.

The claimants entered into a written contract with G T Construction Co., for the construction of a house.

7. **Code of Virginia Section 54.1-1120(A)(5)** prohibits recovery when the claimant is an employee of such judgment debtor, vendor of such judgment debtor, another licensee, the spouse or child of such judgment debtor nor the employee of such spouse or child, or any financial or lending institution nor anyone whose business involves the construction or development of real property.

On Question Number 6 of the Claim Form, the claimant was asked: Are you a vendor of the regulant (contractor)? Are you an employee, spouse or child of the regulant (contractor) or an employee of such spouse or child? Do you hold, or have you ever held, a Virginia Class A or Class B State Contractor's license or registration? Do you operate as a financial or lending institution? Does your business involve the construction or development of real property? Claimant answered "No."

8. **Code of Virginia Section 54.1-1120(A)(6)** states no directive from the fund shall be entered until the claimant has filed with the Directors Office a verified claim containing the following statements: (a) that the claimant has conducted debtor's interrogatories to determine whether the judgment debtor has any assets which may be sold or applied in satisfaction of the judgment; (b) a description of the assets disclosed by such interrogatories; (c) that all legally available actions have been taken for the sale, or application of the disclosed assets and the amount realized therefrom; and (d) the balance due the claimant after the sale or application of such assets.

Debtor's interrogatories were not conducted. The regulant filed for bankruptcy protection.

9. **Code of Virginia Section 54.1-1120(A)(7)** states a claimant shall not be denied recovery from the Fund due to the fact the order for the judgment filed with the verified claim does not contain a specific finding of "improper and dishonest conduct." Any language in the order that supports the conclusion that the court found that the conduct of the regulant involved improper or dishonest conduct may be used by the

Board to determine eligibility for recovery from the Fund.

Judgment was not obtained. In the Affidavit of Facts dated **October 11, 2002**, the claimants assert they entered into a contract with the regulant for the construction of a house. The regulant received a total amount of \$68,932.00 toward the construction of the house. The regulant did not return to complete the project. The claimants had to hire another contractor to complete the project in the amount \$52,550.00. The additional cost incurred by the claimants was \$32,164.25 over the original contract amount.

10. Code of Virginia Section 54.1-1120(B) requires if the regulant has filed bankruptcy, the claimant shall file a claim with the proper bankruptcy court. If no distribution is made, the claimant may then file a claim with the Board.

On Question Number 5 of the Claim Form, the claimant was asked if, to their knowledge, the regulant had filed for bankruptcy? In response to this question, the claimant responded, "Yes."

11. Code of Virginia Section 54.1-1123(C) excludes from the amount of any unpaid judgment any sums representing interest, or punitive or exemplary damages.

The Claim Form does not include interest or damages.

Conclusion and Recommendation

Based upon information presented at the Recovery Fund IFF, it is recommended that the claim be approved for payment in the amount of \$10,000.00. The payment of the claim is based on the retention of funds and abandonment, which fall within the definition of improper and dishonest conduct, per §54.1-1118.

By: _____

**Robert M. Kirby
Presiding IFF Board Member
Contractor's Recovery Fund**

Date: October 29, 2003

**COMMONWEALTH OF VIRGINIA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION
BOARD FOR CONTRACTORS**

**IN RE: In the matter of the Virginia Contractor Transaction Recovery Act
Claim of Gerald J. Spates (Claimant) and H&H Builders, LLC, t/a
H&H Builders, LLC (Regulant)
LICENSE NUMBER: 2705-058354**

FILE NUMBER: 2003-01616

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on September 29, 2003, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding sent by certified mail to Gerald J. Spates c/o Donald C. Blessing, Attorney, John F. Harper and Terrance E. Hathaway with H&H Builders, LLC on September 2, 2003. The following individuals participated at the conference: Gerald J. Spates, Claimant; Jeffrey Buckley, Staff Member; and Robert M. Kirby, Presiding Board Member. John F. Harper and Terrance E. Hathaway for H&H Builders, LLC, Regulant, did not appear in person or by any other qualified representative.

Background

On **April 25, 2002**, in the United States Bankruptcy Court, Western District of Virginia, Terrace Edward Hathaway, pdba H&H Builders, LLC, pdba H&H Plumbing Contractors, LLC, filed a Chapter 7 Petition.

The **claim** in the amount of **\$10,000.00** was received by the Department of Professional and Occupational Regulation on **October 11, 2002**.

Summation of Facts

1. **Code of Virginia Section 54.1-1120(A)** requires the claimant to obtain a final judgment in a court of competent jurisdiction in the Commonwealth of Virginia against any individual or entity which involves improper or dishonest conduct.

Terrace Edward Hathaway, pdba H&H Builders, LLC, pdba H&H Plumbing Contractors, LLC, filed for bankruptcy protection, therefore judgment was not obtained.

2. **Code of Virginia Section 54.1-1120(A)** also requires the transaction occurring during a period when such individual or entity was a regulant and in connection with a transaction involving contracting.

The claimant **did** contract with the regulant.

The Board issued Class A License Number 2705058354 to H&H Builders, LLC, t/a H&H Builders, LLC, on **September 6, 2000**. The license was terminated on **April 23, 2002**. The claimant entered into a written contract with H&H Builders, LLC on **November 21, 2000** for the construction of a house.

3. **Code of Virginia Section 54.1-1120(A)(1)** provides whenever action is instituted against a regulant by any person, such person shall serve a copy of the process upon the Board.

The Contractors Board was not served prior to the claim being filed.

4. **Code of Virginia Section 54.1-1120(A)(2)** states a copy of any pleading or document filed subsequent to the initial service process in the action against a regulant shall be provided to the Board.

The Board did not receive any pleadings or documents prior to the claim being filed.

5. **Code of Virginia Section 54.1-1120(A)(3)** requires a verified claim to be filed no later than twelve months after the judgment becomes final.

The claim was received on **October 11, 2002**. Judgment was not obtained.

6. **Code of Virginia Section 54.1-1120(A)(4)** states the claimant shall be an individual whose contract with the regulant involved contracting for the claimant's residence.

The claimant entered into a written contract with H&H Builders, LLC, for the construction of a house.

7. **Code of Virginia Section 54.1-1120(A)(5)** prohibits recovery when the claimant is an employee of such judgment debtor, vendor of such judgment debtor, another licensee, the spouse or child of such judgment debtor nor the employee of such spouse or child, or any financial or lending institution nor anyone whose business involves the construction or development of real property.

On Question Number 6 of the Claim Form, the claimant was asked: Are you a vendor of the regulant (contractor)? Are you an employee, spouse or child of the regulant (contractor) or an employee of such spouse or child? Do you hold, or have you ever held, a Virginia Class A or Class B State Contractor's license or registration? Do you operate as a financial or lending institution? Does your business involve the construction or development of real property? Claimant answered "No."

8. **Code of Virginia Section 54.1-1120(A)(6)** states no directive from the fund shall be entered until the claimant has filed with the Directors Office a verified claim containing the following statements: (a) that the claimant has conducted debtor's interrogatories to determine whether the judgment debtor has any assets which may be sold or applied in satisfaction of the judgment; (b) a description of the assets disclosed by such interrogatories; (c) that all legally available actions have been taken for the sale, or application of the disclosed assets and the amount realized therefrom; and (d) the balance due the claimant after the sale or application of such assets.

Debtor's interrogatories were not conducted. The regulant filed for bankruptcy protection.

9. **Code of Virginia Section 54.1-1120(A)(7)** states a claimant shall not be denied recovery from the Fund due to the fact the order for the judgment filed with the verified claim does not contain a specific finding of "improper and dishonest conduct." Any language in the order that supports the conclusion that the court found that the conduct of the regulant involved improper or dishonest conduct may be used by the Board to determine eligibility for recovery from the Fund.

Judgment was not obtained.

In the Affidavit of Facts dated **October 10, 2002**, the claimant asserts that the regulant received funds from the claimant for the cost involved with the construction of the house. The claimant received notice from a supplier for an unpaid bill in the \$26,513.63. A second supplier for electrical materials contacted the claimant for an unpaid bill for approximately \$9,000.00. The regulant agreed to pay the two suppliers and assured the claimant that all payments to the suppliers would be made. A disputed amount of \$26,513.63 for Gerald J. and Linda Spates has been listed on the Attachment To Notice Of Amendment To Debtor's Schedules of Creditors with the bankruptcy court.

During the IFF, Mr. Spates testified that the \$9,000.00 debt to a Farmville electrical supplier was settled by H&H Builders. The \$26,513.63 claim from White's Building Supply was negotiated to a settlement sum of \$17,500.00 by Mr. Spates. Mr. Spates has paid this settlement to White's Building Supply.

10. **Code of Virginia Section 54.1-1120(B)** requires if the regulant has filed bankruptcy, the claimant shall file a claim with the proper bankruptcy court. If no distribution is made, the claimant may then file a claim with the Board.

On Question Number 5 of the Claim Form, the claimant was asked if, to their knowledge, the regulant had filed for bankruptcy? In response to this question, the claimant responded, "Yes."

11. **Code of Virginia Section 54.1-1123(C)** excludes from the amount of any unpaid judgment any sums representing interest, or punitive or exemplary damages.

The Claim Form does not include interest or damages.

Conclusion and Recommendation

Based upon information presented at the Recovery Fund IFF, it is recommended the claim be approved for payment in the amount of \$10,000.00. H&H Builders, Inc. failed to pay White's Building Supply in the amount of \$26,513.63 from funds paid by the Spates to H&H Builders, Inc. Mr. Spates had to ultimately pay White's Building Supply \$17,500.00 to settle this account. I find these actions by H&H Builders fall within the definition of improper and dishonest conduct per Section 54.1-1118.

By: _____

**Robert M. Kirby
Presiding IFF Board Member
Contractor's Recovery Fund**

Date: October 29, 2003

**COMMONWEALTH OF VIRGINIA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION
BOARD FOR CONTRACTORS**

**IN RE: In the matter of the Virginia Contractor Transaction Recovery Act
Claim of Elizabeth Jenkins (Claimant) and John E. Morrison t/a John
E. Morrison Paving (Regulant)
LICENSE NUMBER: 2705-044819**

FILE NUMBER: 2003-01560

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on October 29, 2003, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding sent by certified mail to Elizabeth Jenkins, c/o Legal Services of Eastern Virginia, Inc. and John E. Morrison, t/a John E. Morrison Paving on September 3, 2003. The following individuals participated at the conference: John E. Morrison, Regulant; Violet Tabb appeared on behalf of her mother, Elizabeth Jenkins, Claimant; Karen Rose, Attorney for Claimant; Jeffrey Buckley, Staff Member; and Robert M. Kirby, Presiding Board Member.

Background

On **December 17, 2001**, in the Williamsburg-James City County General District Court, Elizabeth Jenkins obtained a **Judgment** against John E. Morrison t/a Colonial Paving, in the amount of **\$4,450.00, plus interest and \$28.00 costs**.

The claim in the amount of \$5,346.10 was received by the Department of Professional and Occupational Regulation on November 21, 2002. **(note: the claimant has included interest in the total claim amount)**

Summation of Facts

1. **Code of Virginia Section 54.1-1120(A)** requires the claimant to obtain a final judgment in a court of competent jurisdiction in the Commonwealth of Virginia against any individual or entity which involves improper or dishonest conduct.

The Warrant in Debt recites "Breach of contract to pave driveway" as the basis for the suit. The block designated "Contract" has been marked.

2. **Code of Virginia Section 54.1-1120(A)** also requires the transaction occurring during a period when such individual or entity was a regulant and in connection with a transaction involving contracting.

The claimants **did** contract with the regulant. The license number on the contract is the same license number issued by the Board for Contractors to John E. Morrison t/a John E. Morrison Paving. As stated on the contract payment was to be made to John E. Morrison. The Board issued Class C License Number 2705044819 to John E. Morrison t/a John E. Morrison Paving, on **May 13, 1998**. The license was permanently revoked on **January 29, 2003**. The claimant entered into a written contract with Colonial Paving, on **December 14, 2000** for the paving of a driveway at the claimant's residence.

3. **Code of Virginia Section 54.1-1120(A)(1)** provides whenever action is instituted against a regulant by any person, such person shall serve a copy of the process upon the Board.

The Contractors Board was not served prior to the claim being filed.

4. **Code of Virginia Section 54.1-1120(A)(2)** states a copy of any pleading or document filed subsequent to the initial service process in the action against a regulant shall be provided to the Board.

The Board did not receive any pleadings or documents prior to the claim being filed.

5. **Code of Virginia Section 54.1-1120(A)(3)** requires a verified claim to be filed no later than twelve months after the judgment becomes final.

A Judgment was entered on **December 17, 2001**. The claim was received on **November 21, 2002**.

6. **Code of Virginia Section 54.1-1120(A)(4)** states the claimant shall be an individual whose contract with the regulant involved contracting for the claimant's residence.

The claimant entered into a written contract with Colonial Paving for the paving of a driveway at the claimant's residence.

7. **Code of Virginia Section 54.1-1120(A)(5)** prohibits recovery when the claimant is an employee of such judgment debtor, vendor of such judgment debtor, another licensee, the spouse or child of such judgment debtor nor the employee of such spouse or child, or any financial or lending institution nor anyone whose business involves the construction or development of real property.

On Question Number 6 of the Claim Form, the claimant was asked: Are you a vendor of the regulant (contractor)? Are you an employee, spouse or child of the regulant (contractor) or an employee of such spouse or child? Do you hold, or have you ever held, a Virginia Class A or Class B State Contractor's license or registration? Do you operate as a financial or lending institution? Does your business involve the construction or development of real property? Claimant answered "No."

8. **Code of Virginia Section 54.1-1120(A)(6)** states no directive from the fund shall be entered until the claimant has filed with the Directors Office a verified claim containing the following statements: (a) that the claimant has conducted debtor's interrogatories to determine whether the judgment debtor has any assets which may be sold or applied in satisfaction of the judgment; (b) a description of the assets disclosed by such interrogatories; (c) that all legally available actions have been taken for the sale, or application of the disclosed assets and the amount realized therefrom; and (d) the balance due the claimant after the sale or application of such assets.

Debtor's interrogatories were conducted. No assets were revealed.

9. **Code of Virginia Section 54.1-1120(A)(7)** states a claimant shall not be denied recovery from the Fund due to the fact the order for the judgment filed with the verified claim does not contain a specific finding of "improper and dishonest conduct." Any language in the order that supports the conclusion that the court found that the conduct of the regulant involved improper or dishonest conduct may be used by the Board to determine eligibility for recovery from the Fund.

The Warrant in Debt recites "Breach of contract to pave driveway" as the basis for the suit.

In the Affidavit of Facts dated **November 19, 2002**, the claimant asserts the regulant paved a driveway at the claimant's residence. During the paving project heavy equipment made deep recess tire prints in the claimant's lawn, which the regulant agreed to correct. The driveway started deteriorating after approximately four months. The claimant made several attempts to notify the regulant of the problem occurring with the driveway.

During the IFF, both parties agreed that the regulant did return to the property, however, Ms. Tabb noted that Mr. Morrison was not cooperative and repairs were never made, nor was the judgment settled.

10. **Code of Virginia Section 54.1-1120(B)** requires if the regulant has filed bankruptcy, the claimant shall file a claim with the proper bankruptcy court. If no distribution is made, the claimant may then file a claim with the Board.

On Question Number 5 of the Claim Form, the claimant was asked if, to their knowledge, the regulant had filed for bankruptcy? In response to this question, the claimant responded, "No."

11. **Code of Virginia Section 54.1-1123(C)** excludes from the amount of any unpaid judgment any sums representing interest, or punitive or exemplary damages.

The Claim Form **does** include interest or damages.

Conclusion and Recommendation

Based upon information presented at the Recovery Fund IFF, it is recommended that the claim be approved for payment in the amount of \$4,546.00, which includes Judgment of \$4,450.00 plus cost of \$28.00, Interrogatories of \$28.00, and Garnishment of \$40.00. The payment of the claim is based upon the failure of Morrison to adhere to the terms of his contract, specifically his material misrepresentation in repeatedly promising to, yet ultimately failing to address warranty issues. In this case the repeated failure of Morrison to adhere to his promises constitutes improper and dishonest conduct, per Section 54.1-1118, of the Code of Virginia.

By: _____

**Robert M. Kirby
Presiding IFF Board Member
Contractor's Recovery Fund**

Date: October 29, 2003
COMMONWEALTH OF VIRGINIA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION

BOARD FOR CONTRACTORS

IN RE: In the matter of the Virginia Contractor Transaction Recovery Act
Claim of Curtis R. Fultz (Claimant) and Sunrooms by Steppe, LC t/a
Sunrooms by Steppe, LC (Regulant)
LICENSE NUMBER: 2705-048098

FILE NUMBER: 2003-00297

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on October 29, 2003, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding sent by certified mail to Curtis R. Fultz and Mary J. Steppe, Sunrooms by Steppe, on September 2, 2003. The following individuals participated at the conference: Curtis R. Fultz, Claimant; Jeffrey Buckley, Staff Member; and Robert M. Kirby, Presiding Board Member. Mary J. Steppe, Sunrooms by Steppe did not appear in person or by any other qualified representative.

Background

On **December 19, 2001**, in the United States Bankruptcy Court, Western District of Virginia, Sunrooms by Mary Jane, Inc. fka Sunrooms by Steppe, LLC, filed a Chapter 7 Petition. (note: As stated by the claimant on the bankruptcy form "I could not file as I was not listed as a creditor and not sent a notice to file a Proof of Claim.)

On **June 10, 2002**, in Augusta County General District Court, Curtis R. Fultz obtained a **Judgment** against Sunrooms by Steppe, Mary J. Steppe, **in the amount of \$3,293.33, plus interest and \$30.00 costs.**

The **claim** in the amount of **\$3,323.33** was received by the Department of Professional and Occupational Regulation on **July 24, 2002.**

Summation of Facts

1. **Code of Virginia Section 54.1-1120(A)** requires the claimant to obtain a final judgment in a court of competent jurisdiction in the Commonwealth of Virginia against any individual or entity which involves improper or dishonest conduct.

The Warrant in Debt recites "Sunroom still leaks on one wall" as the basis for the suit.

2. **Code of Virginia Section 54.1-1120(A)** also requires the transaction occurring during a period when such individual or entity was a regulant and in connection with a transaction involving contracting.

The claimant **did not** contract with the regulant.

The claimant contracted with Steppe Painting & Sunrooms. The address on the contract is the same address listed on the licensing records with the Board for Contractors for Sunrooms by Steppe LC. The contract was signed by Mary J. Steppe. M. Steppe is the Responsible Management and Qualified Individual for Sunrooms by Steppe, LC.

The Board issued a Class C License Number 2705048098 to Sunrooms By Steppe, LC t/a Sunrooms By Steppe, LC, on **February 13, 1999**. The license expired on **February 28, 2001**. The claimant entered into a written contract with Steppe Painting and Sunrooms on **September 23, 1999** for the addition of a sunroom at the claimant's residence.

3. **Code of Virginia Section 54.1-1120(A)(1)** provides whenever action is instituted against a regulant by any person, such person shall serve a copy of the process upon the Board.

The Contractors Board was not served prior to the claim being filed.

4. **Code of Virginia Section 54.1-1120(A)(2)** states a copy of any pleading or document filed subsequent to the initial service process in the action against a regulant shall be provided to the Board.

The Board did not receive any pleadings or documents prior to the claim being filed.

5. **Code of Virginia Section 54.1-1120(A)(3)** requires a verified claim to be filed no later than twelve months after the judgment becomes final.

A Judgment was entered on **June 10, 2002**. The claim was received on **July 24, 2002**.

6. **Code of Virginia Section 54.1-1120(A)(4)** states the claimant shall be an individual whose contract with the regulant involved contracting for the claimant's residence.

The claimant entered into a written contract with Steppe Painting and Sunrooms for the addition of a sunroom at the claimant's residence.

7. **Code of Virginia Section 54.1-1120(A)(5)** prohibits recovery when the claimant is an employee of such judgment debtor, vendor of such judgment debtor, another licensee, the spouse or child of such judgment debtor nor the employee of such spouse or child, or any financial or lending institution nor anyone whose business involves the construction or development of real property.

On Question Number 6 of the Claim Form, the claimant was asked: Are you a vendor of the regulant (contractor)? Are you an employee, spouse or child of the regulant (contractor) or an employee of such spouse or child? Do you hold, or have you ever held, a Virginia Class A or Class B State Contractor's license or registration? Do you operate as a financial or lending institution? Does your business involve the construction or development of real property? Claimant answered "No."

8. **Code of Virginia Section 54.1-1120(A)(6)** states no directive from the fund shall be entered until the claimant has filed with the Directors Office a verified claim containing the following statements: (a) that the claimant has conducted debtor's interrogatories to determine whether the judgment debtor has any assets which may be sold or applied in satisfaction of the judgment; (b) a description of the assets disclosed by such interrogatories; (c) that all legally available actions have been taken for the sale, or application of the disclosed assets and the amount realized therefrom; and (d) the balance due the claimant after the sale or application of such assets.

Debtor's interrogatories were not conducted. The regulant could not be found.

9. **Code of Virginia Section 54.1-1120(A)(7)** states a claimant shall not be denied recovery from the Fund due to the fact the order for the judgment filed with the verified claim does not contain a specific finding of "improper and dishonest conduct." Any language in the order that supports the conclusion that the court found that the conduct of the regulant involved improper or dishonest conduct may be used by the Board to determine eligibility for recovery from the Fund.

The Warrant in Debt recites "Sunroom still leaks on one wall" as the basis for the suit.

In the Affidavit of Facts dated **July 5, 2002**, the claimant asserts that the regulant constructed a sunroom on the claimant's residence which has continued to leak from the time the structure was constructed. Several attempts to correct the leaking have been unsuccessful.

10. Code of Virginia Section 54.1-1120(B) requires if the regulant has filed bankruptcy, the claimant shall file a claim with the proper bankruptcy court. If no distribution is made, the claimant may then file a claim with the Board.

On Question Number 5 of the Claim Form, the claimant was asked if, to their knowledge, the regulant had filed for bankruptcy? In response to this question, the claimant responded, "Yes."

11. Code of Virginia Section 54.1-1123(C) excludes from the amount of any unpaid judgment any sums representing interest, or punitive or exemplary damages.

The Claim Form does not include interest or damages.

Conclusion and Recommendation

Based upon information presented at the Recovery Fund IFF, it is recommended that the claim be approved for payment in the amount of \$3,473.33, which includes \$3,293.33 for judgment, \$30.00 court costs, \$150.00 debtor interrogatory attorney fee. The Warrant in Debt recites "Sunroom still leaks on one wall", and the contractor failed to correct the leaks, which falls within the definition of improper and dishonest conduct, per Section 54.1-1118, Code of Virginia.

By: _____

**Robert M. Kirby
Presiding IFF Board Member
Contractor's Recovery Fund**

Date: October 29, 2003

**COMMONWEALTH OF VIRGINIA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION
BOARD FOR CONTRACTORS**

**IN RE: In the matter of the Virginia Contractor Transaction Recovery Act
Claim of William M. Stokes, Jr. (Claimant) and Sammy Dalton Miller,
Jr. t/a Miller's Residential Roofing (Regulant)
LICENSE NUMBER: 2705-051790**

FILE NUMBER: 2002-03093

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on October 29, 2003, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding sent by certified mail to William M. Stokes, Jr. and Sammy Miller, Jr., t/a Miller's Residential Roofing on September 2, 2003. The following individuals participated at the conference: William M. Stokes, Jr., Claimant; Jeffrey Buckley, Staff Member; and Robert M. Kirby, Presiding Board Member. Sammy D. Miller, Jr., t/a Miller's Residential Roofing did not appear in person or by any other qualified representative.

Background

On **September 28, 2001**, in Henrico County General District Court, William M. Stokes, Jr., obtained a **Judgment** against Sam Miller, Jr., **in the amount of \$990.00, plus interest and \$30.00 costs**.

The **claim** in the amount of **\$1,020.00** was received by the Department of Professional and Occupational Regulation on **April 10, 2002**.

Summation of Facts

1. **Code of Virginia Section 54.1-1120(A)** requires the claimant to obtain a final judgment in a court of competent jurisdiction in the Commonwealth of Virginia against any individual or entity which involves improper or dishonest conduct.

The Warrant in Debt does not recite the basis for the suit.

2. **Code of Virginia Section 54.1-1120(A)** also requires the transaction occurring during a period when such individual or entity was a regulant and in connection with a transaction involving contracting.

The claimant **did** contract with the regulant.

The Board issued Class C License Number 2705051790 to Sammy Dalton Miller, Jr., t/a Miller's Residential Roofing, on **August 26, 1999**. The license expired on **August 31, 2001**. The claimant entered into a written contract with

Sam Miller, Jr., on **August 3, 2001**, for the removal and replacement of the roof on the claimant's residence.

3. **Code of Virginia Section 54.1-1120(A)(1)** provides whenever action is instituted against a regulant by any person, such person shall serve a copy of the process upon the Board.

The Contractors Board was not served prior to the claim being filed.

4. **Code of Virginia Section 54.1-1120(A)(2)** states a copy of any pleading or document filed subsequent to the initial service process in the action against a regulant shall be provided to the Board.

The Board did not receive any pleadings or documents prior to the claim being filed.

5. **Code of Virginia Section 54.1-1120(A)(3)** requires a verified claim to be filed no later than twelve months after the judgment becomes final.

A Judgment was entered on **September 28, 2001**. The claim was received on **April 10, 2002**.

6. **Code of Virginia Section 54.1-1120(A)(4)** states the claimant shall be an individual whose contract with the regulant involved contracting for the claimant's residence.

The claimant entered into a written contract with Sam Miller, Jr., for the removal and replacement of the roof on the claimant's residence.

7. **Code of Virginia Section 54.1-1120(A)(5)** prohibits recovery when the claimant is an employee of such judgment debtor, vendor of such judgment debtor, another licensee, the spouse or child of such judgment debtor nor the employee of such spouse or child, or any financial or lending institution nor anyone whose business involves the construction or development of real property.

On Question Number 6 of the Claim Form, the claimant was asked: Are you a vendor of the regulant (contractor)? Are you an employee, spouse or child of the regulant (contractor) or an employee of such spouse or child? Do you hold, or have you ever held, a Virginia Class A or Class B State Contractor's license or registration? Do you operate as a financial or lending institution? Does your business involve the construction or development of real property? Claimant answered "No."

8. **Code of Virginia Section 54.1-1120(A)(6)** states no directive from the fund shall be entered until the claimant has filed with the Directors Office a verified claim containing the following statements: (a) that the claimant has conducted debtor's interrogatories to determine whether the judgment debtor has any assets which may be sold or applied in

satisfaction of the judgment; (b) a description of the assets disclosed by such interrogatories; (c) that all legally available actions have been taken for the sale, or application of the disclosed assets and the amount realized therefrom; and (d) the balance due the claimant after the sale or application of such assets.

Debtor's interrogatories were not conducted, as the Regulant failed to appear.

9. **Code of Virginia Section 54.1-1120(A)(7)** states a claimant shall not be denied recovery from the Fund due to the fact the order for the judgment filed with the verified claim does not contain a specific finding of "improper and dishonest conduct." Any language in the order that supports the conclusion that the court found that the conduct of the regulant involved improper or dishonest conduct may be used by the Board to determine eligibility for recovery from the Fund.

The Warrant in Debt does not recite the basis for the suit.

In the Affidavit of Facts dated **April 26, 2002**, the claimant asserts he paid Sam Miller, Jr., the total contract amount of \$990.00 prior to starting the project. The regulant cashed the check and never returned to complete the project.

10. **Code of Virginia Section 54.1-1120(B)** requires if the regulant has filed bankruptcy, the claimant shall file a claim with the proper bankruptcy court. If no distribution is made, the claimant may then file a claim with the Board.

On Question Number 5 of the Claim Form, the claimant was asked if, to their knowledge, the regulant had filed for bankruptcy? In response to this question, the claimant responded, "No."

11. **Code of Virginia Section 54.1-1123(C)** excludes from the amount of any unpaid judgment any sums representing interest, or punitive or exemplary damages.

The Claim Form does not include interest or damages.

Conclusion and Recommendation

Based upon information presented at the Recovery Fund IFF, it is recommended that the claim be approved for payment in the amount of \$1,020.00, which includes \$990.00 for judgment and \$30.00 costs. William Stokes, Jr. paid the total contract amount to Sammy Miller, Jr. prior to starting the project. Sammy Miller, Jr. cashed the check and never returned to complete the project, which falls within the definition of improper and dishonest conduct, per Section 54.1-1118, Code of Virginia.

By:_____

**Robert M. Kirby
Presiding IFF Board Member
Contractor's Recovery Fund**

Date: October 29, 2003

STATE AND LOCAL GOVERNMENT
CONFLICT OF INTEREST ACT

TRANSACTIONAL DISCLOSURE STATEMENT
for Officers and Employees of State Government

1. Name: Robert M. Kirby
2. Title: Member, Board for Contractors
3. Agency: Department of Professional and Occupational Regulation
4. Transaction: Informal Fact-Finding Conference on October 29, 2003
5. Nature of Personal Interest Affected by Transaction: P.O.B.
D.E. KILGAY, INC.

6. I declare that:

(a) I am a member of the following business, profession, occupation or group, the members of which are affected by the transaction:

DE KILGAY, INC., BUILDERS & CONTRACTORS EXCH, ALC. 11 VA

(b) I am able to participate in this transaction fairly, objectively, and in the public interest.

Robert M. Kirby
Signature

10-29-2003
Date